

### REMARKS

The Examiner is thanked for the review of the application. Claims 1-24 are pending.

#### Claims 6 and 18

Claims 6 and 18 have been amended to correct grammatical errors unrelated to their claim scope.

#### Claim 15

Claim 15 has been amended to correct an informality unrelated to its claim scope.

### Claims Distinguished

#### Claims 1-24

Claims 1-24 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,742,829 to Davis et al. ("*Davis*").

35 U.S.C § 102(b) provides:

A person shall be entitled to a patent unless -

...

(b) the invention was patented ... in this ... country ... more than one year prior to the date of the application for patent in the United States

To establish a *prima facie* case of anticipation under 35 U.S.C § 102, the Examiner must identify where "**each and every facet of the claimed invention is disclosed in the applied reference**" *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1462 (Bd. Pat. App. & Interf. 1990), see also *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052, 32 U.S.P.Q.2d 1017, 1019 (Fed. Cir. 1994).

Furthermore, anticipation requires that each claim element must be identical to a corresponding element in the applied reference. *Glaverbel Société Anonyme v. Northlake Mktg & Supply, Inc.*, 45 F.3d 1550, 1554 (Fed. Cir. 1995). Indeed, the failure to mention "a claimed element (in) a prior art reference is enough to negate anticipation by that reference" *Atlas Powder Co. v. E.I. duPont De Nemours*, 750 F.2d 1569, 1574 (1984).

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of anticipation and that Claims 1-24 are patentable over *Davis*. The Office Action fails to show, and the Applicants are unable to find, where *Davis* discloses, teaches or even suggests the subject

matter of the claimed invention. Among other differences, *Davis* fails to teach, disclose or suggest the element of providing a client computer with a task list. In particular, the cited and applied reference fails to teach, disclose or suggest "providing a client computer with an update task list listing one or more tasks to be performed by the client computer asynchronously." It is incorrect that *Davis* specifies providing a task list, and further incorrect to allege that such a task list of a client computer lists one or more tasks to be completed asynchronously by *Davis*. Those of ordinary skill in the art will appreciate that *Davis* merely schedules, at a server computer, downloads of updates to a client computer. Accordingly, as will be further discussed below, Claims 1-24 clearly recite one or more of these elements not taught or suggested by *Davis*.

*Davis* teaches a software updating system. *Davis* accomplishes the software updates on a server-side system that has servers determining the update requirements and schedules of client computers. In contrast, Claim 1 reads as follows:

1. In a server, a method of operation comprising:  
accepting check in **by a client computer** at a first point in time to **determine if the client computer's software needs to be updated**; and  
providing the client computer with an **update task list** listing one or more **tasks to be performed by the client computer asynchronously** at a later point or later points in time to update the client computer's software, if it is determined that the client computer's software is to be updated.

*(emphasis added)*

The software updating of the method recited in Claim 1 provides a type of software updates not taught or disclosed by *Davis*. In fact, the Applicants have been unable to identify anywhere within *Davis*, let alone the cited portions of *Davis*, where a task list is mentioned. In particular, *Davis* fails to teach "providing the client computer with an **update task list** listing one or more **tasks to be performed by the client computer asynchronously** at a later point or later points in time to update the client computer's software" (see also page 9, lines 13-20 for further examples). From this distinction alone, it is clear that the present invention, as recited in Claim 1, is distinct from the teachings of *Davis*. *Davis* uses a server to schedule and push down updates. *Davis* is not a system for a client computer asynchronous updating software of a client computer as in the invention of Claim 1. The present invention, as recited in Claim 1, is directed to providing such a method of computing with updates performed at the client computer.

Thus, it is clear that *Davis* fails to teach the method of updating of the present invention. *Davis* merely teaches a method of scheduling at a server, that is distinct from the present invention as claimed in Claim 1. Likewise, independent claims 8, 13 and 20 contain similar elements not taught by *Davis*. Therefore, Applicants submit that Claims 1, 8, 13 and 20, as and all the claims dependent therefrom (Claims 2-7, 9-12, 14-19 and 21-24) are clearly allowable.

Claims 2-7, 9-12, 14-19 and 21-24 depend from allowable independent claims and are therefore allowable for the reasons already noted above. Claims 2-7, 9-12, 14-19 and 21-24 are allowable for additional reasons. These claims include further recitations not taught, disclosed, or even suggested by *Davis*. For example, Claim 7 recites that the client computer will "retry one or more of the subsequent asynchronous requests for software parts". Applicants have been unable to identify anywhere in *Davis* where *Davis* teaches specifying retrying asynchronous requests. The cited portion of *Davis* (Figure 3A and related text) has no teaching of retrying any requests, let alone retrying asynchronous requests. Accordingly, as *Davis* fails to teach retrying asynchronous requests, as in the present invention, it is clear that *Davis* does not anticipate Claim 7. For these reasons, in addition to those already noted above, Claim 7 is in condition for allowance. The remaining dependent claims also recite limitations not taught by *Davis*.

**CONCLUSION**

As a result, Applicants submit that all of the pending claims are in condition for allowance. Accordingly, a Notice of Allowance is respectfully requested. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 689-1216. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge Deposit Account No. 500393.

Date: \_\_\_\_\_

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Respectfully submitted,  
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